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CONTENTS

REPORTS

NOTES OF THE WEEK

The Printing Dispute

As we go to press, efforts are still being made by both sides in the Printing Industry to avert a national stoppage. We do not know, however, whether these efforts will be successful, or whether we—as an innocent party in this dispute—will be unable to publish until the dispute be resolved.

If the stoppage occurs, and the *Justice of the Peace and Local Government Review* does not, temporarily, appear, we hope that readers will understand that this is through no fault of the publishers, and that publication will be resumed at the earliest opportunity.

Just Cause for Leaving Husband

In *Buchler* v. *Buchler* (1947) 111 J.P. 179; [1947] 1 All E.R. 319, Lord Greene, M.R., said "In constructive desertion the spouse charged must be shown to have been guilty of conduct equivalent to 'driving the other spouse away' from the matrimonial home and to have done so with the intention of bringing the matrimonial consortium to an end." In that case the husband consorted continually with an employee, a pigman and neglected his wife's society. It was admitted there was no immorality in the relationship. The wife protested, and the husband said she could leave if she did not like it. He made no protest when she left him. The Judge found desertion by the husband proved but the Court of Appeal reversed his decision.

That case was distinguished in *Morse* v. *Morse* (*The Times*, June 2). This was an appeal by the wife against a decree granted to the husband on the ground of desertion by the wife. The Court of Appeal allowed the appeal, holding that on the facts found by the Commissioner the wife was justified in leaving her husband.

Hodson, L.J., said in the course of his judgment that the wife's case was that she had been driven out by her husband's conduct and that she was justified in leaving. The husband had a smallholding and he had engaged a girl to work in the matrimonial home and on the farm as a land worker. There was no suggestion of impropriety or improper association between them but the wife was to a large extent supplanted by the girl in the affections of her husband. Both were interested in the country and farm work, and became on friendly terms. After a time the husband left the matrimonial bedroom. He refused to terminate the girl's employment in spite of his wife's objection. On the evidence of the husband himself, he made it practically impossible for the wife to stay. He told his wife that if she did not like it she could go. The relationship in the present case was of a kind to which the wife was entitled to object and she had not been unreasonable in so doing. If the wife's jealousy had been wholly unreasonable she would have no ground for appealing. The Commissioner was wrong in thinking that the borderline of the normal risks of matrimony had not been crossed.

The case illustrates the truth of the statement in *Rayden on Divorce* seventh edn. p. 152, where *Buchler* v. *Buchler, supra,* is cited: "It is difficult to deduce from the decided cases any principle of law by reference to which it can be determined in every case on which side of the line a case falls."

Costs on Acquittal

Mr. J. P. Eddy, Q.C., with his long experience of the criminal law as a member of the bar, recorder, and stipendiary magistrate, writing in *The Times* on June 2, raised a point of importance about the grant of costs of the defence in criminal cases. He refers to the complete discretion of a court of Assize or quarter sessions, on the acquittal of the accused, to order payment of the costs of his defence out of local funds, and suggests that the matter deserves fresh consideration. He does not ignore the pronouncement of Lord Goddard, C.J., on behalf of the Judges in 1952 (*see Stone*, p. 245) to the effect that the power so to order should not be exercised as a matter of course, but rather as an exception, Mr. Eddy thinks that it would be better if the refusal to make the order were made the exception.

The grant of expenses out of public funds is clearly to be distinguished from costs as between prosecution and defendant. It is certainly exceptional

for a court to order payment of costs by the prosecution when the accused is aquitted. A man who is acquitted is not necessarily proved innocent and he may be fortunate to escape conviction, in which case there is no moral ground for making the prosecution reimburse him in respect of his costs. On the other hand, if he can be reimbursed without penalizing the prosecutor, it may well be argued that, subject to exceptions, the defendant, who by reason of his acquittal is entitled to be treated as innocent, ought to be in no worse position than the prosecution, which is usually granted its costs out of public funds.

In view of the opinion of the Judges, it needs careful consideration before a change of practice ought to be adopted, but there is certainly something in Mr. Eddy's advocacy to justify the reconsideration for which he asks.

Revision of Penalties

For some time past there has been a considerable demand for a review of maximum fines in respect of criminal offences, because of the striking difference that has taken place in recent years in the value of money. It is reasonable to point out that when some of these were fixed, perhaps 100 years ago, the maximum fine prescribed was heavy enough to be a deterrent, and even those fines prescribed in much more recent times mean much less today than they did when Parliament fixed them. In the early days of this century a fine of 40*s*. might well be the equivalent of a weeks' wages and hit the offender and his family hard, while today such a sum may quite easily be the equivalent of only one day's work or less.

To suggest that all pecuniary penalties fixed before a certain date should be doubled or trebled is to simplify the matter too much. The general attitude towards certain offences changes from time to time, and for some offences any increase in penalties would be contrary to public opinion. Any revision must be the result of a careful consideration of the various offences, the way in which they are regarded today, and the way in which the courts are accustomed to deal with them.

This matter of fines is, however, only a part of a larger question, upon which a report has been prepared called *Legal Penalties. The Need for Revaluation*, by a committee appointed by *Justice* (British section of the International Commission of Jurists) and published by Stevens & Sons, Ltd.

Sentences and Anomalies

The report recognizes the need for allowing a wide discretion to the courts, but suggests that wide discrepancies do exist in the ways in which different courts deal with similar offences. Criticism is generally directed at the amount of a fine imposed rather than against the statutory maximum.

Looking at punishments in general the first thing to be noticed is the immense variety of maxima provided for crimes which are not inherently very different from each other. The reasons, points out the report, are largely historical. There has been a tendency to visit offences against property with greater severity than offences of violence or indecency against the person. This is to some extent true, and in our view public opinion is now turning against such a distinction and regards the severity formerly imposed upon offenders against property as a relic from the days when the law was made mostly by the property-owning class. That is not to say that the courts are today inflicting heavier punishments in respect of offences against property, but only to point out, as does this report, that the maximum sentences allowed by law should be reconsidered and obvious anomalies removed. The report suggests that some maxima are too high and some too low, and that this does really matter. Where the maximum is too low it may become worth while for offenders to persist in their offences because it pays them to do so ; street betting and soliciting prostitution are quoted as examples. Again, it is suggested if the maximum penalty is frequently imposed for some offence the reasonable inference is that the maximum is too low. The maximum should be high enough to be adequate punishment for the worst cases in the category covered. On the other hand, says the report, there must be many crimes for which the maximum punishment has not in fact been imposed for generations. "It is inconceivable today that a life sentence should be imposed for 'personating an owner of stock' or for destruction of a baptismal register; that 14 years' imprisonment should be awarded for poaching by three armed persons, or five years for cheating at games."

Suggested Amendments of the Law

Having dealt with what they considered to be some of the anomalies and defects in the present law the committee proceeded to make proposals for dealing with them. First, the maximum sentence allowed should be sufficient to deal with any case likely to arise and not so great that it cannot conceivably be necessary to impose it. It is desirable that in a national legal system the relationship between the maxima for different crimes should be a logical one. Secondly, the law should aim at being as simple, intelligible and consistent as possible. The law of larceny is instanced as containing many anomalies and as in need of amendment and simplification in the light of modern social conditions. At present it is unintelligible to many people and there have been judicial pronouncements on its defects. As the report states, for larceny the defect is one of over-elaboration, for false pretences it is rather one of excessive uniformity.

Further suggestions are that certain matters to be taken into account by way of aggravation might with advantage be laid down by law so as to apply to criminal offences generally, instead of being left entirely to the discretion of the court. To some extent this might also be applied to the question of mitigation, but the report does not recommend that anything approaching rule of thumb methods of sentencing would be desirable, and with this we certainly agree. Nor is it considered desirable that minimum penalties should be laid down. The report concludes by suggesting that the subject is one for a committee of inquiry. It certainly presents a number of important points for discussion, expressed with moderation and obviously after much consideration. Magistrates will find it profitable reading, and we think they will agree with the committee when it says "Whatever guidance is given to the courts by statute, we consider it essential that they should not be deprived of the power to take account of circumstances for which the legislature has made no provision, and to give such weight to them as they think fit, within reasonable limits."

Large Litter

In connexion with our Note of the Week at p. 340, *ante*, a correspondent points out that the Litter Act, 1958, applies to the deposit of litter in the open air from a place to which the public have access without payment, as well as in or into such a place, provided the result is to cause or tend to defacement of a place in the open air. The Act thus catches the common practice of throwing cartons and other

small objects from the street into the garden or area of a house beside the street, and, in the context of our Note, catches the deposit of old iron and the like upon a country field, so long as this is done from the highway. If the culprit adds impudence to injury by driving into the field before he unloads his rubbish, he escapes from the toils of this Act. Our correspondent points out also that there are two aspects of the question inferentially indicated at the end of our former Note, of the responsibility of the local authority. Miscellaneous old iron dumped on someone else's land is clearly not house refuse, so far as concerns the occupier of that land. It would be stretching the normal use of words to say that it was trade refuse, but substantial justice might be done if a local authority treated it as such, and removed it in return for a modest charge under s. 73 of the Public Health Act, 1936. The farmer might regard it as hard that he should have to pay at all, but there seems no reason why the cost of clearing his land of other people's rubbish should fall upon the ratepayers. It is sometimes said, and truly, that farmers have always been exposed to this nuisance, but the problem is more serious today for several reasons. There is a larger population, and its members make greater use of metal and other containers and other intractable objects, not easily disposed of by the ordinary person--ranging from tins to broken beds and derelict motor cars. Secondly, the almost universal use of motor cars has made it easier (as was mentioned in our former Note) for the selfish person to dump this rubbish at a distance from its place of origin. Thirdly, improved farming means that the damage is more important than in the days when most farms comprised some land which was not much used.

The other aspect of the problem which may concern local authorities is that of dealing with this sort of rubbish at its place of origin. The Public Health Act, 1936, like earlier Acts, seems to assume that "refuse" is either trade refuse, which the local authority are not bound to remove and may charge for removing, or house refuse which (normally ; more or less universally today) they must remove without charge.

A broken bedstead or the glass of a broken window is plainly not trade refuse, but it comes into existence in the ordinary course in every household. Since s. 75 of the Act of 1936 contemplates that house refuse will be put into a dustbin, local authorities can argue that objects too big to go into a dustbin need not be removed by them under s. 72, but fall within s. 74 of the Act. Most householders, we suppose, have found that the council's dustmen take this line in practice, and they are willing enough to pay the men some small sum, by way of gratuity, for getting rid of larger objects, neither party having s. 74 in mind. It could, however, be claimed upon the case law that all rubbish of a domestic character, produced in the ordinary course in a private house, is "house refuse" which the local authority must collect without charge. Fortunately for local authorities, no single householder is likely to take the question into court, but it does seem to be one which ought to be considered. We have from time to time answered questions about the obligation of the local authority to collect rubbish produced in the course of business in a retail shop, especially large tins and cartons, which we have said fall, in our opinion, within s. 72, not s. 73 of the Act. Here the law works hardly upon the local authority and it may be worth considering whether the Public Health Act, 1936, should be amended in such a way as to make clear what is the middle class of refuse contemplated by s. 74. This might well be applied to extraneous objects dumped upon a farm, as well as to the miscellaneous débris produced in shops, which is of the nature of house refuse, and at present has to be collected as such, but is produced in trade. The same would apply to the smashed sofas and worn-out wireless sets of the normal home. It would be a good thing to put it beyond doubt that the local authority can be required to collect this sort of rubbish since otherwise worse will come of it, especially in towns where there are vacant plots of land. But they should have a statutory right to make a reasonable charge.

Planning Appeals to Quarter Sessions

We have spoken already of the confusion about ss. 23 and 24 of the Town and Country Planning Act, 1947. At the time of writing we do not know whether an opportunity will be found in the present Parliament to clear up the doubts which have already led to uncertainty and expense, which would have been avoided if Parliament had made up its mind in 1947. Our preference would be for allowing recourse to magistrates upon the question whether there has been development as well as upon questions which arise at later stages of enforcement. There may be reasons which can be advanced against our view, as indeed they were advanced by Mr. Justice Donovan in one of the cases, but what is essential is that a firm decision shall be reached by Parliament. Meantime we are indebted to the town clerk of Weymouth for a note of curious point, which also ought to be cleared up. In *Jones* v. *Ealing Corporation* (1959) 123 J.P. 148 ; [1959] 1 All E.R. 194, it was held that a planning authority were not aggrieved within the meaning of s. 23 (5) of the Act of 1947, so as to be entitled to appeal to quarter sessions, unless costs had been awarded against them in the magistrates' court. In the case of *Westmacott* v. *Weymouth Corporation*, heard by the appeal committee of Dorset quarter sessions on March 25, 1959, the corporation appealed against a decision of the borough magistrates in respect of part of the land involved, and also in relation to the use of the whole land during the winter months. Counsel for Mr. Westmacott conceded that the corporation were aggrieved because the magistrates had awarded costs against them, but argued that they were not a "person" within the meaning of the same subsection. The learned chairman of the appeal committee decided that the scope and purpose of s. 23 as a whole showed an intention that the word "person" in subs. (5) was not to have the wide meaning given to it by s. 19 of the Interpretation Act, 1889, and accordingly that the corporation's appeal failed on this preliminary point, so that quarter sessions was precluded from going into the merits.

Our learned correspondent reminds us that in *Jones* v. *Ealing Corporation, supra*, the deputy chairman of the appeal committee for Middlesex had held that the corporation of Ealing was a person; this necessarily followed from the decision that it was a person aggrieved. When the Divisional Court overruled quarter sessions upon the meaning of the word "aggrieved" it left undecided the question whether a planning authority was a person, although it is fair to say that all three members of the Court thought this at best a doubtful point. The position, therefore, at the moment is that two distinguished Queen's Counsel sitting as chairmen of quarter sessions have differed about the meaning in its context of this word, and that the Dorsetshire decision places upon the word in the Town and Country Planning Act, 1947, a meaning different from that

attached to it under s. 301 of the Public Health Act, 1936, in *R.* v. *Surrey Quarter Sessions, ex parte Lilley* (1951) 115 J.P. 507; [1959] 2 All E.R. 659.

Now, it may or may not be right that a local authority, acting in something like a judicial capacity under the Act of 1947, should have no right of going beyond the magistrates' court, where there is a decision entirely on facts. It cannot be right that the power of going further should depend upon the award of costs; this is not fair either to the local authority or to the other party who, because he has got his costs in the court below, finds himself obliged to fight the case again at quarter sessions. It is worst of all that property owners and local authorities do not know whether this right of appeal is available to the local authority, because Parliament did not make clear in the Act of 1947 whether it wished to exclude the general language of the Interpretation Act, 1889.

As this Note was going to press, we were told that the *Weymouth* decision may be taken to the Divisional Court upon Case Stated. This should make it clear what the word "person" in this context means, but, whatever it means, Parliament ought to look again at this group of sections.

CONTEMPT OF COURT

By EDWARD S. WALKER, D.P.A.(Lond.) A.C.C.S.

Contempt of court is once again in the news now that *Justice* has published its report on contempt. Whilst agreeing with the report that "the substantive law of criminal contempt is chaotic and a serious handicap to free discussion," it is not proposed to discuss this interesting report, but to consider one aspect of contempt, incidentally referred to in the report—that of contempt of inferior courts of record.

County courts clearly have power to commit any person wilfully insulting the Judge, a juror, witness or any officer of the court during the holding of the court. The committal being until the rising of the court. The Judge may also commit the offender for any period not exceeding seven days or impose a fine of £5 (County Courts Act, 1934, s. 139 and the Administration of Justice Act, 1956, s. 29).

In regard to justices in quarter or petty sessions, *Stone* 1958, p. 247, states that "Pollock and Follett, when law officers of the Crown advised that justices had no power to commit for contempt. After this opinion it would, we think be unwise for any justice, relying on old cases or textbooks to exercise a power which was questioned by such high legal authority and cases of alleged contempt should be reported to the Director of Public Prosecutions."

Stone then goes on to say that whenever the Queen's Bench Division has jurisdiction to correct an inferior court, it also has jurisdiction to protect that court by attachment for contempt *R.* v. *Davies* [1906] 1 K.B. 32. And also that an offender may be required to find sureties for good behaviour if he (i) uses disrespectful or unmannerly expressions in *facie curiae;* (ii) out of court he disparages justices in relation to their office; (iii) he uses words tended directly to a breach of the peace; or (iv) out of court he obstructs or insults an officer of the court in the execution of his office. And, in default of sureties, the justices may commit to prison; but it must be made clear on the face of the warrant that the committal is for want of sureties and not merely for contempt: *Dean's* case (1599) Cro. Eliz. 689. It is also added that where an assault occurs actually in court "a very useful procedure would be to order a summons at once to be served on the defendant returnable *instanter*" per Lord Goddard, C.J. in *R.* v. *Butt* [1957] 41 Cro. App. Cas. 82.

It is, with respect to the learned editors of *Stone* and the committee of *Justice*, suggested that the foregoing is not the whole story.

Disobedience to an order of the justices is in a number of cases, and in the absence of any other remedy, a misdemeanour indictable at common law: *R.* v. *Brisby* (1849) 1 Den. 416 (bastardy order made at petty sessions); *R.* v. *Sewell* (1845) 8 Q.B.D. (order for restitution of premises by justices of Assize under Distress of Rent Act, 1737). However, the authorities are not concerned with order *inter partes* in civil suits: *Scott* v. *Scott* [1931] A.C. 417, H.L. at p. 461, per Lord Atkinson.

In regard to proceedings by way of indictment for disobedience of an order of the justices a person cannot be found guilty of such disobedience if the order related to a matter in which the justices had no jurisdiction: *R.* v. *Hollis* (1819) 2 Stark. 536. If however, there was jurisdiction, the question of whether it was rightly made on the merits will not be considered: *R.* v. *Mytton* (1785) 4 Doug. K.B. 333. The defendant may give in evidence, as a defence by way of excuse, that he had done everything in his power to obey the order: *R.* v. *Kingston* (1806) 8 East. 41 at p. 52.

In the case of contempt by a ministerial officer's disobeying an order of the justices the correct remedy is not committal but indictment, or attachment if the court has power to attach: *R.* v. *Surrey County Treasurer* (1819) 1 Chit. 650; *R.* v. *Wood Ditton* (*Highway Surveyors*) (1849) 3 New Mag. Cas. 166.

As reference has already been made, it must also be remembered that the High Court, Queen's Bench Division, has general superintendence over all crimes (Supreme Court of Judicature (Consolidation) Act, 1925, s. 56) and watches over the proceedings of inferior courts, not only to prevent excess of jurisdiction, but to prevent interference with the course of justice: *R.* v. *Edwards, ex parte Welsh Church Temporalities Commissioners* (1933) 49 T.L.R. 383 D.C. The Queen's Bench Division will punish as contempt disobedience to a Crown Office subpoena in connexion with an inquiry into a criminal offence pending before the justices.

But an indictment or information will not lie for insulting words spoken to or of a magistrate when he is not sitting, unless the tendency of the words was to provoke a breach of the peace, *ex parte Chapman* (1836) 4 Ad. & El. 773; *R.* v. *Revel* (1721) 1 Stra. 420, where it was held that when words are spoken reflecting upon a justice in his presence and in the execution of his office, he may commit for contempt, but where, behind his back, the offender may be indicted. But *quaere*, whether a justice of the peace has a right to commit for a contempt when not sitting in court: *Pettit* v. *Addington* (1791) Peake 87. It must also be remembered that a magistrate cannot commit for contempt without a warrant: *Mayhew* v. *Locke* (1861) 7 Taunt. 63.

Finally, with respect to *Stone* and the publication by *Justice* reference is made, firstly, to the modern case of *R.* v. *Lefroy* (1873) L.R. 8 Q.B. 134; 37 J.P. 566, *sub. nom. ex p. Jolliffe*, 42 L.J.Q.B. 121; *sub. nom. Re County Court Judge, ex p. Jolliffe*, 28 L.T. 132; *sub. nom. Re Lefroy, ex*

p. Jolliffe, 21 W.R. 532, per Cockburn, C.J.: "inferior courts of record have only power over contempts in *facie curiae*. All Courts of Record have power to fine and imprison for any contempt committed in the face of the court for the power is necessary for the due administration of justice to prevent the court being interrupted. But it is quite another thing to say that every inferior Court of Record shall have power to fine or imprison for contempt when that contempt is committed out of court."

Secondly, reference is made to *Groenvelt* v. *Burnall* (1700) Carth 491; 1 Com. 76; Holt K.B. 536; 1 Lord Raym. 454; 1 Salk. 200, 396; *sub. nom. Grenville* v. *College of Physicians*, 12 Mod. Rep. 386, where it was held that wherever a power is given to examine, hear and punish it is a judical power and they in whom it reposes as judges, and wherever there is a jurisdiction erected with power to fine and imprison that is a Court of Record; and that the very lodging of this power (to fine and imprison) in them made them judges of record.

Nulla curia quae recordum non habet potest mandare carceri.

From the above can it not be deduced that (*a*) a magistrates' court is a Court of Record, and (*b*) that, because it is a Court of Record, it has power to fine or imprison for contempt in *facie curiae*?

LONDON CAB HIRINGS

The cases of *Cogley* v. *Sherwood* and *Howe* v. *Kavanagh* decided by the Uxbridge magistrates and afterwards by the Divisional Court, which we noticed at pp. 216 and 292, *ante*, and in our Supplement 44 at p. 174, marked the "shooting" stage of a cold war of which for some years there have been rumours. The proprietors of hackney carriages in London, with the owner drivers, had become deeply suspicious of increased activity by firms providing chauffeur driven cars for hire. It has always been clear that the licensed hackney carriage had the sole right of plying for hire, in the sense of being offered for casual custom in a street, while a vehicle whether licensed or not licensed as a hackney carriage could lawfully be let out from premises not open to the public as of right. There was debatable ground at railway stations, airports, race tracks, and some other places where neither the hackney carriage nor the car designed for private hire could go without permission from the owner of the premises. If a licensed hackney carriage does ply for hire at a railway station it is, by statute, subject to the same obligations as when plying in the street, and whilst the proprietors of hackney carriages did not deny that a person expecting to reach London at a certain time could lawfully engage in advance a vehicle other than a hackney carriage, it has been argued on their behalf that the monopoly conferred upon them by Parliament in streets, by reason of the obligation they have assumed to accept casual hiring, ought logically to extend to other premises upon which the public could go either as of right or upon payment, as in the case of a racecourse—unless the passenger had made arrangements in advance to have some other vehicle there to meet him. On the other hand, it was contended that the public arriving at a railway station or an airport ought to be entitled to hire a vehicle of a different type, without having been put to the trouble of booking in advance.

So also it was said that patrons of a race track, who had not booked a vehicle in advance for their return home, ought to have the opportunity of hiring something other than a hackney carriage if they so desired, provided they did so on the premises to which they had been admitted on payment, and not in the street. The dispute came to a head at London Airport. The position there was complicated by the fact that not many journeys undertaken from the airport would be shorter than six miles—a fundamentally important point, on which we shall have more to say.

There have from time to time been attempts to help passengers to find vehicles other than hackney carriages, or (to look at the matter from the other side) to find custom for firms providing vehicles on private hire. While this Note was being written we noticed in the London papers mention of complaints in Jersey, by the proprietors of licensed hackney carriages who did not think it right for the stewards of British European Airways to take bookings on board the aeroplanes going to Jersey, for the coach which would convey passengers from the airport to the town terminal at St. Helier. We understand that aeroplanes coming to London Airport are met by a coach supplied by London Transport, but that no attempt is made to effect bookings for the coach while passengers are in the air, and that the fare from Paris to London, for example, does not cover transit by the coach. The reason for this last arrangement is said to be that so many people are now met at the airport by their own cars or by vehicles hired separately. One can imagine that an enterprising private hire firm might arrange, either through servants of the company flying the aircraft, or through a canvasser who could be at the point of departure of the aircraft, for a car to be hired to meet the aircraft on arrival. We are informed that at one time some firms did have canvassers at Dover, meeting the cross-channel steamer and taking bookings from passengers, either on the platform or in the train which was about to start for London. The bookings were then telephoned to London, and the passenger could be sure of a private hire car to meet him at Victoria. We have also been told that there were formerly arrangements by which passengers on cross-channel steamers were informed by loud speaker that they could effect a booking with the purser, for a car to meet them at Victoria: we are not sure whether this is still being done. Where an arrangement of this sort is made, or where a passenger who buys a ticket in Paris from an agency is asked by the agency whether he would like to have a car waiting for him at Victoria or at London Airport, there is, in one sense, an encroachment upon the field which otherwise would be open to the proprietors of licensed hackney carriages, waiting at the London station or the airport. We do not, however, think that any complaint could properly be made by the hackney carriage trade, so long as the booking was effected at a distance and communicated to London by telephone. On the face of things the case may be slightly different, under the arrangements which are now apparently in force at the airport. So also it would be possible for one of the private hire firms, by arrangement with British Railways, to establish a booking office or kiosk at any of the London stations, where a person could go and order a car—which could then be summoned by telephone or even by bell from some near-by garage or standing place. The vehicle would not be plying for hire, in the sense of being shown to the customer and standing where he could hail it.

There would, it is true, be some analogy with the cases where it has been held that a vehicle not actually in sight of the customer at the time when he engaged it was, nevertheless, plying for hire, and it remains to be established whether such an arrangement would contravene the law either in London or in the provinces. It would certainly be convenient to some passengers, and

probably, if the vehicles hired at the desk remained outside the station, would be *a fortiori*, when compared with *Cogley* v. *Sherwood* and *Howe* v. *Kavanagh*. The system at the airport was that cars could be hired at a desk, where the booking clerk would summon a car waiting on a stand within the precincts of the airport. At one building where there was such a desk, the customer could not see the cars; at the other he could—this was why two test cases were brought. In the result, the distinction was not held to make any legal difference.

One condition upon which these cars for private hire were allowed to use the airport was that they would conform to a schedule of charges, and this, as well as because some passengers wanted a vehicle of a different type, may well have been among the reasons why the Minister of Transport and Civil Aviation, who controls the airport, had arranged standing room for cars to be let on private hire. The driver of a hackney carriage in the Metropolitan police district is not bound to convey a passenger for a greater distance than six miles, and if he does so is entitled to make a special bargain. There are debatable points: must he stipulate for the increased fare before the journey begins, if he knows that it will be longer than six miles? If he waits till the end of the journey and then claims more than the fare shown on the meter, how is the amount lawfully claimable to be decided?

These finer points may not be in the mind of the intending passenger wishing to drive away from London Airport but, if he is broadly acquainted with the law, he knows that he cannot oblige the driver of a hackney carriage to go more than six miles and, so far as the law is concerned, that such a driver is entitled to demand anything he likes for bringing the passenger to a destination in central London. It may have been that proprietors and drivers of hackney carriages, using London Airport as a place for finding passengers, agreed among themselves upon a voluntary limitation of their charges, but there was no means of compelling them to do so once the distance of six miles was exceeded. The general public is interested only in securing the sort of vehicles it requires at a proper charge, and is likely to welcome the decision, legitimating the arrangements at the airport. The propriety of the charge was in fact secured by these arrangements, so that the passenger was, in that respect, in a better position than if he had hired a licensed hackney carriage for a longer journey than six miles, nor was it suggested that the limitation on the charges had caused the number of cars for private hire at the airport to fall off.

The case does throw into relief the need for re-considering some aspects of the law relating to hackney carriages in London. Several years ago when Mr. Chuter Ede was Home Secretary it was stated that he had appointed a working party, to examine the law relating to hackney carriages in London and also in the provinces. For the latter purposes representatives of municipal boroughs and urban districts were added to the working party, but (so far as we have seen) nothing has happened as the result of its report. In particular, the moral of the recent case may be that it is time to review the provision under which a hackney carriage driver who is required to go for a greater distance than six miles can charge what he likes.

Apart from the doubtful points above mentioned, which could be cleared without altering the six mile distance, that distance is now obsolete. We understand that attempts to alter it have hitherto been resisted by the proprietors of hackney carriages, and still more strongly by the drivers of the carriages, because the effect might be to entitle a passenger to take a cab to some of the more remote parts of the Metropolitan police district where there would be virtually no chance of a return booking. It is hirings in the central part of London which provide almost the whole revenue of most hackney carriage proprietors, and a succession of short hirings is also more advantageous to the driver, because the custom has grown up of adding a tip in addition to the fare, and few passengers adhere strictly to a percentage of the legally chargeable fare; they give something over and above. It is however a serious question which ought to be considered, whether the distance should not be increased to something more in accord with the capabilities of modern vehicles. When the distance of six miles was fixed, it bore some relation to the distance which could be travelled in an hour with a horse drawn cab. Whether or not the compulsory distance be altered for ordinary hirings, there is certainly a strong case for altering it when a hackney carriage is hired at an airport outside the six mile radius, for taking passengers into central London, and we think also for altering the law by which the driver can make any bargain he likes if a cab is hired in central London for the purpose of driving to the airport. We are told that in Paris there is a printed list of fares for cabs taking passengers to Orly and Le Bourget. We see no reason why a similar list of special fares should not be authorized for London. It might be reasonable to allow the driver in these cases some percentage of the fare, higher than he receives upon an ordinary hiring, though this is a detail.

MEN ON THE ROAD

Since the end of World War II it has been fashionable among those who serve on local councils to deplore the steady erosion in the powers of local government. Yet the loss of one responsibility in particular by more than a few county councils and boroughs in various parts of the country has probably been welcomed, if not actually requested.

Reception centres, formerly the old casual wards, which provide accommodation for those without a settled mode of life, under local authority control, have been reduced in number each year since 1948 when the National Assistance Act was introduced.

It would appear that the objections of Hospital Boards (many centres are or have been attached to local hospitals) to renewing the leases for reception centres on the grounds of requiring the space for expansion, have in some instances, coincided with the National Assistance Board policy of having fewer centres, and more widely separated.

Parallel with this closure of many centres under local authority administration, acting as agents for the board, four new centres have been opened under the direct tutelage of the N.A.B. A fifth is shortly to be opened for the north eastern area at Clawsworth, near Newcastle-on-Tyne.

In 1954 there were 83 reception centres for wayfarers in England and Wales, and 36 in Scotland. Today there are 57 in England and Wales and only eight in Scotland.

Most recent centre to be opened is at Winterbourne, eight miles from Bristol, which replaces the former centre, administered by the Bristol city council, in the grounds of the Frenchay Hospital. Situated on what was an anti-aircraft gun site, it has been given a more habitable and modern look by the Ministry of Works. And claimed as the pattern of the future reception centre, it has the supreme merit of having, in addition to the normal quarters for nightly callers,

a section for holding men permanently with a view to re-settling them in normal life.

That there has been a greater economy and more co-ordination from these N.A.B. changes is made clear in the figures for vagrancy. Whereas the number of centres has been halved within the space of a few years, the number of wayfarers has not been reduced by the same proportion. In January, 1953, 2,392 was the average nightly figure of callers. Yet in January, 1957, the figure was 2,032.

Whereas just before the war it was estimated that 10,000 men were "on the road" it would seem that since the end of the war there has been a hard core of over 2,000 men calling at reception centres each night, though this 2,000 does not always represent the same persons. It is seriously suggested that there are over 3,000 men and no more than 100 women leading a life of aimless wandering in Britain today.

Three main causes

Under skilled and humane guidance, the centre at Winterbourne has an approach to vagrancy that reflects the imaginative measures adopted by the N.A.B., not merely for accommodating wayfarers but for their re-settlement.

We are entitled to ask, in a welfare society, with social security as its base, who are the types of men (women are so few as to represent a separate and distinct problem) who live a life of vagrancy. On the assumption that there is no need for any man to be "on the road" we must inquire as to the domestic, psychological and economic factors that lead men into such a life.

Winterbourne centre's warden, basing his findings on experience and personal observation, suggests three main causes—(*a*) mental incapacity, (*b*) drink, and (*c*) disputes with wives or domestic breakdown. Some of these causes overlap, with many side issues in between.

Many are in need of medical attention, a good number of them requiring psychiatric treatment. Thus, the warden has placed many of those who have been under his care, in Bristol mental hospitals, with some remarkable success—and many failures. But inducing the men to take a course of psychiatric treatment is by no means easy. Such men hold the stigma about mental ill health to a more marked degree than the community as a whole.

Intimate contact with the Ministry of Labour and industry has led to many being found jobs—and lodgings—in the Bristol district.

Taking the country as a whole, the resettlement of casuals has proceeded along five main lines. During 1957, 452 were returned to their homes; 648 admitted to accommodation provided by local authorities under part III of the National Assistance Act, as being in need of care and attention; 447 admitted to hospital; 57 sent to re-establishment centres; and 8,797 placed in employment.

Of those found work, 1,483 were also found lodgings. But many casuals placed in jobs do not retain them for long, failure to put in an appearance after the first pay-day being all too common. Within a few months the same wayfarer may have been placed in several different types of work in various parts of the country. The actual placings therefore, represent a much smaller figure than the records suggest. Nevertheless, the efforts of the reception centres and the Ministry of Labour do result in a substantial amount of work in normal life by casuals which would not otherwise be done.

Prosecutions under s. 18

As with all other centres, many of those who use the Winterbourne centre are quite capable of maintaining themselves by working, but who prefer free accommodation, even of the austere kind, if they can obtain it. Many are heavy drinkers when in funds. They are not vagrants in the accepted sense but resort to the centre when their money has run out.

As a means of meeting this form of abuse, some centres are designated under s. 18 of the Act so that selected wayfarers may be detained (subject to a right of appeal) for a maximum period of 48 hours and may be made to work within the centre during this two days. Defaulters may be prosecuted and, if convicted, sent to prison.

During 1957, 15 men were prosecuted under s. 18 for absconding from a designated reception centre whilst subject to direction.

Five casuals were prosecuted for persistently neglecting to maintain themselves. Experience, however, shows that it is by no means easy to take proceedings against the men under the Act. There has to be sufficient evidence to show that the neglect has been persistent. Sufficient information for this purpose can rarely be collected.

A general obstacle to reclamation is the shortage in most towns of suitable hostels and private lodgings for casuals placed in work. It is claimed that many of the men who resort to these centres, particularly those who are used to a communal way of life and find any other kind intolerable, would not so readily go adrift if they could be found places at working men's hostels. Many casuals who are found work, leave it very quickly, not so much because of dislike of the work, but because of inability to find the kind of lodgings in which they feel at home.

Such men are encouraged to remain in the centre, but any suggestion of permanency is ruled out, for the Act specifies only "temporary board and lodging."

Part III accommodation

The fact that several hundreds each year are admitted to part III accommodation indicates that many casuals are not ill in the sense of requiring hospital treatment, but are in need of care and attention not otherwise available to them. For these groups, local authorities are enabled under part III of the Act to provide accommodation. But most authorities have a long waiting list for such accommodation from among local people. The casual who has no association with any particular locality is not regarded as having a prior claim over a local applicant. Consequently, a number of wayfarers who would be willing to enter part III accommodation —not all of them are—continue their life of aimless wandering for long after they have reconciled themselves to settling down.

But the steady flow from reception centres to part III accommodation suggests real co-operation between the two services in most parts of the country but with the admission that transfer from a reception centre to part III accommodation is more difficult today than a few years ago, the numbers of such transfers having declined.

Much of the difficulty lies in the dichotomy of control. One of the great advantages of the N.A.B. directly running its own reception centres is that it can achieve sensible economies and useful co-ordination precisely because it has the over-all national picture. What is apparent is a wide variation in the methods used at local authority reception centres.

The most recent survey, however, among casuals on the road is highly encouraging. Only 10 *per cent.* were classified as tramps in the old fashioned sense. The number

under 30 years of age shows a steady decline, in fact much of the success in reclamation is among this younger age group. Youths under 20 are now rare.

As might be expected most of the men interviewed described themselves as unmarried, widowers or divorced. It would be fair to say though that most of those claiming to be single have, in fact, a wife and children whose existence is not disclosed for fear of being pressed to maintain them.

Explanations by casuals themselves as to why they have abandon a settled way of life are not necessarily reliable. But a good many claimed they were seeking work or at a loose end because of lack of suitable accommodation. A smaller number said that military service had unsettled their lives. A high number of them could not or would not offer any explanation for their being on the road. Others mentioned disagreement with their wives, being turned out for drunkenness, misbehaviour or incontinence, as the reason for their unsettled lives.

Some, of course, are ex-prisoners who cannot find or cannot keep a job, or who have no settled abode, their wives having left or their families having disowned them. Among these are a small proportion for whom prison holds no fears —they commit a minor offence in the winter to enjoy the organized security and food in prison, taking to the road again in the spring and summer.

What is clear is that the incidence of vagrancy in Britain has shown a steady, but not astronomical drop during the last decade. The patient efforts of the N.A.B. and of reception centres at reducing the numbers on the road have represented a real contribution to the national economy and to the upliftment of thousands of men and their families. If these measures are continued there is reason to believe that vagrancy will, in the long run, be of little significance in this country. But for some time to come we have to be resigned to a hard core of old-stagers for whom a life on the road is preferable to any other.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Parker, C.J., Donovan and Salmon, JJ.)

R. *v.* BARNSLEY LICENSING JJ.

May 8, June 5, 1959

Magistrates—Bias—Licensing—Application on behalf of co-operative society—Justices with small interests by way of shares and loan deposits—No real likelihood of bias—Licensing Act, 1953 (1 *and* 2 *Eliz.* 2, *c.* 46) *s.* 48 (4) (5).

APPLICATION for order of *certiorari*.

On March 5, 1959, the Barnsley licensing justices granted an application by Robert Murray, of the Barnsley British Co-operative Society, Ltd., for a justices' off-licence at the Central Drug Department, Wellington Street, Barnsley. The application was opposed by the Barnsley and District Licensed Victuallers' Association and the Barnsley and District Off-Licence Holders' Protection Association (the present applicants). Of the total of seven justices sitting when the application was granted, six were members of the co-operative society and one was not, but her husband was. There was only one borough justice in Barnsley of whom it could be said that neither he nor his near relative was a member. The justices concerned had small interests in the society by way of shares and loan deposits. All the members of the licensing committee had duly disclosed their interests before their appointment. The present applicants obtained leave to apply for an order of *certiorari* to bring up and quash the justices' order, the ground being bias on the part of the justices, though it was not alleged that they had acted dishonestly or were in fact biased. The allegation was that their membership of the society or the membership of their spouses which attracted financial benefits constituted bias in law. By s. 48 (4) of the Licensing Act, 1953: "No justice shall act for any purpose under this Act in a case that concerns any premises in the profits of which he is interested . . ." By subs. (5): "No act done by any justice disqualified by this section shall be invalid by reason only of that disqualification . . ."

Held (SALMON, J., dissenting): that s. 48 (5) of the Act of 1953 ousted the rule in *R.* v. *Rand*, (1866), L.R. 1 Q.B. 230, and required an applicant for *certiorari* to prove a real likelihood of bias, whether by pecuniary interest or otherwise; here it could not be said that the financial interests of the justices were so substantial as to give rise to a real likelihood of bias; and the application must, therefore, be refused.

Counsel: *H. C. Beaumont* for the applicants; *McLusky* for the respondent.

Solicitors: *Corbin, Greener & Cook*, for *J. Donald Driver*, Barnsley; *Batchelor, Fry, Coulson & Burder*, for *W. Winter*, Barnsley.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

REVIEWS

Cases on the Law of Contract. Third Edition. By G. C. Cheshire and C. H. S. Fifoot. London: Butterworth & Co. (Publishers) Ltd. Price 45s. net.

The first edition of this work appeared in 1946, and took its place immediately amongst the regular stand-bys of the teacher of law. In this new edition 11 cases have been taken out and 13 have been added, and the preface explains that the learned editors have brought in some cases older than the first edition which they think, on reflection, might have been included earlier. In the result the bulk is much the same as before. It may incidentally be remarked that one of the causes which brought the book into immediate popularity is that, by comparison with some books of cases, it is of manageable size.

The Law Reform ((Enforcement of Contracts) Act, 1954, has made it possible to cut out a little, and there are other omissions explained in the preface. As the learned editors say, the choice of cases in a work of this kind must be largely personal, but experience of the previous editions indicates that they have chosen wisely. In particular, the editors have resisted the temptation unduly to cut down the recitals of fact and argument. The student is inclined to go straight to the head note when told to look up a report, and it is important that this tendency be checked at an early stage, by making him examine the salient facts in a case and, where possible, to consider the arguments of counsel—especially where a case has been before two courts or has gone to the House of Lords. While this is primarily a student's book, it is at the same time one which the legal practitioner, including the legal staff of a local authority, may usefully keep at hand for speedy reference.

The Accountant in Public Practice. By K. L. Milne. London: Butterworth & Co. (Publishers) Ltd. Price 25s. net.

The title of this book might at first be misunderstood. The author is not speaking of the numerous accountants employed by public bodies in this country and no doubt elsewhere, but of those in (what would normally be called) private practice—that is to say, those who are practising on their own account and are not in a favoured position. The author is himself in practice in Australia, and we gather that he has been stimulated to write the book partly by the reflection that in various countries outside Great Britain the profession of accountant is coming to the fore, as it has done here, but without quite the same opportunities for obtaining a professional background as are available to accountants in an old established community. The purpose, then, is to explain in the first place to students and also to accountants in practice, who are in any way uncertain about their professional

standing and obligations, that they are a body of professional persons subject to many duties which cannot be expressed in legal form, and have not hitherto been summarized in anything like the same way. The publishers truly describe this as an unusual book. We do not ourselves claim any special knowledge of the duties of an accountant or the pitfalls which beset him, but perusal of the book indicates many ways in which it might usefully be studied by members of other professions. The accountant indeed, like the lawyer or the medical man, has obligations not merely to his client but to the public at large, and the accountant has, perhaps, duties of a peculiar kind in that his reports or certificates, prepared primarily for the benefit of his own client, are relied upon by the taxation authorities, by banks, and by stock exchanges, to a degree which is probably unparalleled where other professions are concerned. Even if, as we gather from the preface, the inspiration has been the need for conveying to young accountants something of the atmosphere which exists in an old established community like the countries of Europe or the United States, there is a great deal which may usefully be pondered by professional men, and not accountants only, in this country. At the modest price of 25*s*., the book certainly deserves to succeed, and we hope that it will have a wide appeal throughout the English speaking world.

The Child and the Court. By W. E. Cavenagh. Gollancz, London. 21s. net.

Mrs. W. E. Cavenagh is well-known in legal circles as a magistrate and as a lecturer. She is a member of the panel of a busy juvenile court, and she has boundless practical experience to support the small amount of theorizing which we find in this excellent book.

So many volumes on juvenile courts and the problems with which they deal are disfigured by amateurish psychology and backboneless sentiment. Here is one which proves a delightful exception to all this: Mrs. Cavenagh is healthily realistic; she indulges in no false romanticism, and she is not afraid to say that a normally intelligent child who steals or burgles knows that he should not do such things. As a result she can see the juvenile court in a more favourable light than some critics, and her suggestions for improvements involve no revolutionary break with the background of criminal law. She finds this a protection to the children brought before the courts, and also a bulwark for the magistrates. So she is not enamoured of the proposals for "case committees"—which would indeed entail drastic changes of emphasis.

The book is clearly and vivaciously written, and no magistrate, probation officer, or social worker should miss it; full of common sense, and intensely practical, it is nevertheless thoroughly humane and enlightened.

Criminals Confess. By Belton Cobb. London: Faber and Faber, Ltd. 16s. net.

Here are the stories of eight famous criminals of the 18th and 19th centuries, as told by themselves in their extraordinarily egocentric confessions. Mr. Belton Cobb has skilfully woven his own brief comments and historical backgrounds into the autobiographical narratives, so that the result is a book as unusual as it is revealing of criminal psychology.

Revealing, that is, up to a point. We learn from these stark, and often terrifying chapters a good deal of the compulsions which, once they get a man of weak character into their grip, drive him with irresistible force to the commission of a whole sequence of crimes; but we are left guessing the reasons why some escape the dread process while others do not.

The book, then, provides fascinating glimpses of the criminal world, but it offers little illumination upon the labyrinthine processes underlying the criminal life. Once this limitation of scope is cheerfully accepted by the reader he can find both entertainment and instruction in these pages—but he would do well to keep the book from the reach of children, for some of the crimes dealt with, notably the murder committed by John Holloway, are detailed with gruesome precision.

MISCELLANEOUS INFORMATION

REPORT ON THE ANIMAL HEALTH SERVICES IN GREAT BRITAIN, 1957

A comprehensive report on the Animal Health Services in Great Britain for 1957 has been published by the Ministry of Agriculture, Fisheries and Food and the Department of Agriculture for Scotland, together with a short statutory Return of Proceedings under the Diseases of Animals Act, 1950, for the year 1958. The latter publication gives a summary of the incidence of animal diseases and related matter for 1958, and will be followed, later in the year, by a full report, including the work of the laboratory research and investigation services.

Outbreaks of foot-and-mouth disease rose from 162 in 1956 to 184 in 1957 and dropped to 116 in 1958: the incidence of anthrax, after an exceptionally high figure in 1956, fell considerably in 1957 and still further in 1958: outbreaks of swine fever rose in 1957 and again in 1958: the number of outbreaks of fowl pest increased slightly in 1957, but decreased again in 1958. It is now expected that the whole of Great Britain will be clear of bovine tuberculosis by the end of 1960 or early in 1961.

THE YOUNGHUSBAND REPORT

There has been published a formidable report of 350 pages of the Working Party on Social Workers in local authority health and welfare services which was appointed in June, 1955, by the Minister of Health and the Secretary of State for Scotland. We shall be considering the report in some detail later. It deserves the most careful consideration of all concerned and especially the local health authorities and their advisers.

The Minister of Health told the House of Commons on the day the report was issued that he was at once seeking the views of the local authority associations and the comments of the interested professional and other organizations. A basic recommendation in the report is for the establishment of a National Council for Social Work training, and a new general training qualification. A national staff college is also proposed. The working party's conclusions are based on evidence both written and oral supplemented by visits to a number of local authorities, replies to a detailed questionnaire circulated to all authorities and field inquiries undertaken for the working party in six selected areas. The working party believe that voluntary organizations still have an important part to play and discuss the ways in which voluntary workers may be used to supplement the work of statutory services.

The report will have an important bearing on the administration of the Mental Health Bill when it becomes law as well as various existing health and welfare statutes. In the debates on the Mental Health Bill the need for efficient and trained mental welfare officers has been stressed. It was suggested by several members that these officers should have some recognized qualification. This must now be considered in the light of the Younghusband report. The Parliamentary Secretary to the Ministry of Health has reminded the House, however, that the Minister already has power under s. 66 of the National Health Service Act to make the necessary regulations prescribing qualifications for such officers. The report shows that there is a general shortage of social workers of all kinds, and that in the mental health field this will be accentuated by the gradual retirement of those experienced officers who were transferred from public assistance administration in 1948. It is suggested that unless some new system is established there will then be no body of men and women with comparable experience or with a recognized training in social work to take their place.

It would seem, however, that even now local authorities can help to meet the situation by providing adequate transport for their staffs and giving them adequate clerical assistance. It surely cannot be a proper use of skilled manpower if, as stated in the report, they have to spend 43 *per cent.* of their time in routine administrative work and 20 *per cent.* of their time in travelling.

ROAD CASUALTIES — APRIL, 1959

Road casualty figures for April, issued on June 4, show that deaths numbered 456. This was 46 more than in April, 1958.

The seriously injured numbered 5,752, and the slightly injured 18,120, making a total for all casualties of 24,328, an increase of 3,242, or just over 15 *per cent.*

Motor traffic on main roads, as estimated by the Road Research Laboratory, was four *per cent.* heavier than in April last year.

The total number of persons killed in road accidents in the first four months of 1959 was 1,624. This was 53 less than in the same period of 1958. The killed and injured totalled 86,988, an increase of 8,593.

MAGISTERIAL LAW IN PRACTICE

Morning Advert'ser. April 29, 1959.

TOMBOLA: CLUB APPEAL DISMISSED

Morning Advertiser Reporter

A Swansea club where tombola was said to have been played regularly four and five times a week had its appeal against a decision by Swansea magistrates dismissed yesterday.

The British Railways Staff Dining and Social Club, High Street, Swansea, was struck off the register on February 12 on the ground that it was habitually used for the purpose of gaming and unlawful lotteries. The magistrate also disqualified the premises for use as a club for 12 months.

On Monday, the club appealed on the ground that the evidence did not justify the magistrates' decision and that, alternatively, the penalty was unduly harsh or excessive.

Giving judgment yesterday at Swansea borough quarter sessions, the recorder, Mr. F. Elwyn Jones, Q.C., said he would not interfere with the order to strike off the club, but he would amend the disqualification period placed on the premises from 12 months to three months.

He granted the respondents 25 guineas costs.

The recorder said a number of games of chance were played at the club, among them tombola. In nine months from January to October last year, it was played on 130 days and on a number of occasions, the prizes exceeded £20.

He said that tombola was introduced to the club in 1957 and it became a wild success. As a result it was played regularly four times a week and in September another evening was added.

In nine months the total receipts from the game were £3,696. Prizes totalled £2,771 and £923 went to the club funds. In addition other games of chance were played at the club.

Since the coming into force of the Small Lotteries and Gaming Act, 1956, we have dealt with numerous queries about the legality of running tombola or housey-housey at a small gaming party in a registered club. In our replies, we have emphasized that there is nothing illegal in this provided that the provisions of s. 4 of the Act are complied with and, of these, the provision that the proceeds must be for something other than private gain is the one which has given rise to most doubts. A club, by its very nature, is a restricted body and we always take the view that the proceeds of such a small gaming party should be for some purpose not too intimately connected with the club or its premises. The dividing line is often blurred and each case must be decided on its own facts.

The remedy against a club infringing the law in respect of small gaming parties need not necessarily be a prosecution under the 1956 Act. The police can apply under s. 144 of the Licensing Act, 1953, to have the club struck off on the grounds that it is not conducted in good faith as a club, or is kept or habitually used for any illegal purpose, and this is what appears to have been done in the present case. The complaint must be in writing against the secretary of the club, and it is noteworthy that this forms an exception to the general rule contained in r. 4 of the Magistrates' Courts Rules, 1952, that a complaint for a summons may be oral. Further, although the complaint is against the secretary of the club, by virtue of s. 144 (3) of the Act, the summons may, in addition, be served on such other persons as the justice issuing it may direct. If the court is satisfied that the complainant has made out his case, it may order the club to be struck off the register and may further order that the premises occupied and used by the club be disqualified for a term not exceeding 12 months, if the premises have not been subject to a previous order, or not exceeding five years if they have. Such an order may subsequently be varied by order on complaint. A right of appeal against an order striking off a club is provided for in s. 144 (8) of the Act, and such an appeal to quarter sessions will be under s. 83 of the Magistrates' Courts Act, 1952, and not under s. 35 of the Licensing Act, 1953, which deals with appeals from licensing justices only. It is curious that no provision has been made for the suspension of an order for disqualification of the premises pending an appeal such as is to be found in the Road Traffic Acts, where an offender has been disqualified for holding or obtaining a driving licence.

From the facts in the report of the present case, it is obvious that gaming had become one of the principal functions of the club and that the proceeds, if not used for private gain, were certainly used for improving the club funds and that neither the magistrates' court nor quarter sessions had any doubt that the club was being habitually used for an illegal purpose.

ANNUAL REPORTS, ETC.

COUNTY BOROUGH OF BRIGHTON: CHIEF CONSTABLE'S REPORT FOR 1958

This force, with an actual strength of 287, had one member in excess of authorized establishment. The chief constable reports that progress has been made in the preparation of plans, etc., for the urgently needed new headquarters. Existing conditions, so long as they last, will impose a severe drag on the force's efficiency.

The number of recorded crimes was 2,027 plus 247 cases of cars being taken without the consent of the owner. In 1957 the total was 1,774; offences against property with violence increased from 169 to 229, and stealing from unattended cars increased by 88 to 214. The report adds, on this last matter, "in a few cases doors or windows of the vehicles were forced, but in the majority the losers contributed to the offence in some measure by leaving tempting articles on view in insecure vehicles." Of the 1,211 crimes detected 938 were committed by adults and 273 by juveniles, the numbers of offenders being 607 adults and 304 juveniles.

There were 2,940 convictions for non-indictable offences, 396 more than in 1957. The report states that "the number of offences of careless or dangerous driving was 203 and 175 convictions were recorded." We assume that this means that the number of prosecutions was 203.

The chief constable makes the same appeal to the public which has been made by a number of his colleagues, that they will not hesitate to use the 999 system to communicate with the police whenever they think something suspicious is occurring which may need police investigation. Police experience shows that small incidents such as unusual noises or lights may often, if reported, lead to the detection or prevention of quite serious crimes.

Of road accidents it is recorded that pedestrians were involved in more than one-third of the total of 728 casualties, and the chief constable emphasizes the need for pedestrians to take every care, especially when crossing the road near a stationary vehicle or when stepping off the footpath. This, of course, does not absolve drivers from their responsibility to exercise all possible care.

COUNTY BOROUGH OF SOUTHEND-ON-SEA: CHIEF CONSTABLE'S REPORT FOR 1958

The chief constable is able to state that the recruiting position is such that he considers that the force will be up to full strength in the near future. The figures on December 31, 1958, were: establishment 308, strength 300. The special constables numbered 110 and "at times when the regular force are under heavy pressure because of difficult traffic conditions members of the special constabulary continue to afford ready and valuable assistance."

In writing of the days lost through sickness the chief constable reports that he is satisfied that there is no abuse of the privilege that up to three days' sick absence may be allowed without a medical certificate; indeed he thinks that without this concession the total amount of sickness would have been much greater.

Southend's mobile police station was again in use in Marine Parade during the holiday period, dealing with all sorts of inquiries, and acting as a reception depot for lost children.

In furtherance of the road safety campaign "Theory of Advanced Driving" examinations were started, entry being restricted to residents in the borough. Of 180 entrants 20 obtained first and 32 second-class certificates. A practical advanced driving test was arranged for those obtaining first-class certificates.

Recorded crimes numbered 3,102, 482 more than in 1957; 1,502 were detected and 400 adults and 169 juveniles were taken before the courts and 43 and 106, respectively, were cautioned. To assist in crime prevention a conference was held which was attended by the majority of local bank managers. Useful suggestions were made to provide better security in banks and when large sums of money are transported.

For non-indictable offences 2,853 persons were taken before the court; 2,715 of them were convicted and six others were committed for trial. The number of such offences for which proceedings were taken was 3,662, including 2,966 motoring offences. There were fewer speed limit prosecutions (119 instead of 159) but careless drivings increased from 294 to 383, and "neglect of other traffic directions and prescribed routes regulations" jumped from 26 to 357.

BIRTHDAY HONOURS

PRIME MINISTER'S LIST
PRIVY COUNSELLOR

Hilbery, The Hon. Sir (George) Malcolm, Judge of the High Court of Justice, Queen's Bench Division.

KNIGHTS BACHELOR

Pell, Captain Francis Richard Jonathan, chief constable, Essex county constabulary.

Peppiatt, Leslie Ernest, president of the Law Society.

Pugh, His Honour Judge John Alun, Judge of county courts.

ORDER OF THE BRITISH EMPIRE
CIVIL DIVISION

C.B.E.

Armstrong, F. J., H.M. inspector of constabulary, Home Office.

Crump, M., deputy director, Department of Director of Public Prosecutions.

Hearn, Col. G. W. R., chief constable, Stafford constabulary.

O.B.E.

Blackburn, G., assistant chief constable, West Riding constabulary.

Breffit, R., chief constable, East Sussex constabulary.

Hartwell, B. J., lately secretary, Justices Clerks' Society of England and Wales.

Mannheim, H., for services to criminological research.

Walker, G. E., secretary, Thames Conservancy.

Watson, Miss S. B., children's officer, Hertfordshire county council.

Woodward, F. R., treasurer, Cornwall county council.

M.B.E.

Bidgood, J. C., lately chief superintendent, Metropolitan police.

Bowman, T., chief superintendent, Leeds police.

Hastings, R. W., clerk of Spalding urban district council.

King, Miss J. F. S., probation officer, Essex.

Rogers, R. E., chief superintendent, Metropolitan police.

Stonehouse, M. R., chief clerk, Swansea county court and district registry of High Court, Supreme Court of Judicature.

BRITISH EMPIRE MEDAL
CIVIL DIVISION

Norris, G. R. T., superintendent, Northampton county borough special constabulary.

COMMONWEALTH RELATIONS OFFICE LIST
ORDER OF ST. MICHAEL AND ST. GEORGE

K.C.M.G.

Wolff, The Hon. Albert Asher, Chief Justice of the State of Western Australia.

COLONIAL OFFICE LIST
KNIGHTS BACHELOR

Bairamian, Vahe Robert, Chief Justice, Sierra Leone.

MacGregor, Colin Malcolm, Chief Justice, Jamaica.

Paterson, George Mutlow, Chief Justice, Northern Rhodesia.

QUEEN'S POLICE MEDAL

Rymer-Jones, Captain J. M., assistant commissioner, Metropolitan police.

Symmons, W. G., chief constable, St. Helen's police.

Tait, W., chief constable, Sunderland police.

Cotton, J. E., chief constable, Rotherham police.

White, A. R. G., assistant chief constable, Somerset constabulary.

Bentley, H. J., assistant chief constable, Cheshire constabulary.

McDonough, C. L., chief superintendent, Metropolitan police.

Smith, S. W., chief superintendent, Birmingham city police.

Clapp, R. D., superintendent, West Sussex constabulary.

Skinner, J. A., superintendent and deputy chief constable, Grimsby police.

Rossiter, E. R., superintendent, Dorset constabulary.

Pitcher, A. R., superintendent. Metropolitan police.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Rowland's Trust Accounts. Second edn. Butterworth & Co. (Publishers) Ltd. Price 40*s.* net.

Acts of Parliament Concerning Wales, 1714–1901. By T. I. Jeffreys Jones. University of Wales Press. Price 35*s.* net.

Covenants, Settlements and Taxation. By G. B. Graham. Solicitors' Law Stationery Society, Ltd. Price 10*s.* 6*d.* net.

Adoption of Children. By J. F. Josling. Solicitors' Law Stationery Society, Ltd. Price 17*s.* 6*d.* net.

Return of Rates, 1959–60. Institute of Municipal Treasurers and Accountants. Price 10*s.* 6*d.* post free.

Attorney for the Damned. (Clarence Darrow.) MacDonald & Co. (Publishers) Ltd. Price 30s. net.

THE WEEK IN PARLIAMENT

By J. W. Murray, Our Lobby Correspondent

The establishment of special road traffic courts was suggested by Lord Elton when he initiated a Lords debate on road accidents.

He said that the Road Traffic Act, 1956, provided for a fine of up to £100 on a first offence for driving under the influence of drink, but the average of fines imposed in 1957 was £22 4*s*. 7*d*. For dangerous driving the maximum fine was £100 and the average imposed in 1957 was £14 3*s*. 10*d*. For careless driving the maximum penalty was £40 on a first conviction and £80 on a second, but the average imposed in 1957 was £5 11*s*. 2*d*. Could anybody suppose that a fine of £5, or for that matter, of £22, was a serious deterrent to the owner of a car ?

The penalty for dangerous driving carried an optional disqualification on a first conviction, and on a second conviction obligatory disqualification for at least nine months. But, of 4,889 convictions in 1957, some disqualification was imposed in just under 2,000 cases, and only in 375 cases was disqualification for more than a year.

During the debates on the 1957 Act, the Lord Chancellor appeared to hint that if that Act did not achieve its object, then some further steps might have to be taken. He had said: "If this effort fails, then not only the magistrates but we ourselves will have to think again."

Lord Elton suggested that the 1956 Act was not doing what had been expected of it. He said he had no ready-made solution of how the courts should be made to do their duty, but he suggested that there should be established special road traffic courts, with special stipendiary magistrates, from whom they could expect a more adequate and uniform enforcement of the law.

Lord Lucas of Chilworth, supporting Lord Elton, said he was quite aware that it was not for the Executive to dictate to the Judiciary. But the magistrates' benches had not the right to flout the rule of Parliament. They were not the sovereign body; Parliament was the sovereign body. Our social system had been built upon a respect for the law and upon the principle that punishment was a deterrent to wrong doing. But, as Lord Elton had proved, there was not that deterrent. How long could a Government, whose prime responsibility was to uphold the majesty of the law, see it brought into complete contempt day in and day out? He knew that the Lord Chancellor, while he appointed the justices and could dismiss them, could not tell them how to do their job. But the flouting of the expressed will of Parliament was a perverse action and should be dealt with as such. He asked the Lord Chancellor whether he did not seriously think that the time had come for him to implement the undertaking he gave during the debate on the 1956 Act, that the discretionary powers contained in that Act might well be the last chance the magistrates had to use their discretion.

Lord Lucas said he had come to the unfortunate conclusion that there were far too many magistrates who were more enamoured of the honour of being a judge of their fellow men than of the terrific responsibility to the community which rested on their shoulders.

Lord Moynihan said it was regrettably true that the amount of fines imposed was almost laughable. Endorsement of licence used to be a serious matter, but now it was nothing of the kind. Prison sentence, of course, had to be inflicted only in the most serious of cases. That left the only genuine deterrent the suspension of licence.

The magistrates seemed timid to use that final deterrent. If only that sanction of suspension of licence were used more often in cases of dangerous driving and with equal strictness by all magistrates, he thought it might have a startling effect for the betterment of safety on the roads. But for that punishment to be effective, the rules of the road themselves must be fair in every case, and he did not think they were at the moment.

The Earl of Selkirk, First Lord of the Admiralty, said that when the latest figures came out it would be shown that the penalties for the more serious offences were higher. They had to remember that magistrates had a tremendous task. Even the greatest Judges made mistakes from time to time, and it was a pity to condemn the whole system as such. But he joined with Lord Lucas and Lord Moynihan on the subject of disqualification. It passed his understanding why the penalty was not far more widely indulged in. If ever there were a case of making the punishment fit the crime, it was that someone who was driving badly should be forbidden from going on the roads. He felt it was a great pity that that power was not sufficiently used at the present time. There was also power under the 1956 Act to order drivers to undergo an additional test, but that power had not been used a great deal.

Nevertheless, the fact was that fewer people were killed on the roads in 1958 than 20 years ago, and when they considered that in 20 years the number of cars on the road had doubled, it was fair to say that Parliament had made some impact on the problem.

Lord Winster thought that Lord Lucas had been severe on justices of the peace. He did not agree that there were many J.P.s who were more occupied with a sense of their own importance and prestige than with their duty to the public. But he was not quite sure whether all magistrates were fully aware of the extent of the powers which they enjoyed. He was quite sure that the disqualification penalty should be much more frequently employed and that it should be more frequently accompanied by an order to take another driving test. He was not enthusiastic about the proposal to turn traffic offences over to stipendiary magistrates. His own court inflicted a minimum penalty of £3 for speeding, but endorsements on licences showed that fines in the Metropolitan magistrates' courts were in the neighbourhood of 25*s*. to £2. If there were other courts like his own, the effect of handing those cases over to the stipendiary magistrates would not make for more severe penalties. He was sure that disqualification in all cases of careless driving, or of driving a motor car while under the influence of drink, would lessen road casualties. That was something which could be done by Parliament; to make disqualification compulsory, sweeping away the "special reasons" for not disqualifying, with which he thoroughly disagreed. There should be no special reasons whatever in those cases.

He added that at one time J.P.s had to disqualify for driving an uninsured vehicle, but in 1956 Parliament altered that from "must" to "may," so that nowadays justices of the peace might, and no longer had to, disqualify. He believed that that was a mistake. Parliament had eased up in those measures instead of tightening up, as one would have liked to see it do.

Lord Merthyr said that he was chairman of the Magistrates' Association, but was expressing his personal views in the debate. He had no objection whatsoever to the criticism which had been made which, right or wrong, had been perfectly fair. He thought the criticism was in part justified and in some degree not justified. He asked the House to consider the mitigating circumstances which might be put forward on behalf of the justices of the peace. They were human; they made mistakes. But it might be reflected, with the greatest respect, that if there were a higher court than the House of Lords, the decision of the House of Lords would sometimes be reversed.

He went on to say that the maximum fine laid down by Parliament, at whatever date, was intended to be for the worst case committed by the richest man. If that were so, they had to consider the vast number of cases which would not be called bad, committed by men who could not be called rich. If all the courts in the land imposed the maximum penalty for every crime there would be an uproar.

Lord Lucas of Chilworth intervened to say that he was not complaining that justices were not imposing the maximum fine, but that they were not taking into consideration the fact that Parliament had shown its regard for the seriousness of road accidents by doubling the fines, and that magistrates had only increased them in some cases by a few *per cent*.

Lord Merthyr replied that he did not dispute that. He admitted that the response had not been all that it might be, but he asked for patience. The tendency to increase the fines was going on all the time.

He submitted that it was relevant, in considering the question of fines, to consider also the amount of costs which the court ordered the defendant to pay. There was an increasing tendency to order a greater degree of costs. The reason why local justices ordered costs rather than fines might not be a very praiseworthy one, but he thought it was a true one and a permissible one, *i.e.*, that the payment of costs benefitted the rates to a greater extent than did the payment of fines. He considered it quite proper, upon conviction, for a court to ask itself what was the total amount that the defendant ought to pay; then to decide how much it was proper and reasonable for him to pay in costs; and finally to say that he should pay the balance by way of fine.

The reason why minimum penalties were undesirable was that if they were imposed by Parliament there was a temptation, which he was afraid would not be resisted by all the justices of the peace, and certainly not by all juries, not to convict in cases where they ought to convict. It might be unfortunate that that should be so, but he thought they had to face the fact. He had actually known cases of justices of the peace who had been reluctant to convict entirely because of the consequences that must inevitably follow. So he thought they ought to reflect seriously before they extended the system of minimum penalties.

He could see no immediate benefit to be found in having courts for motorists. If they suddenly appointed those courts all over the country they would take away about 75 *per cent.* of the work of the ordinary justices in petty sessional divisions. But they would have to continue sitting, and the added cost of the duplication of the courts would be considerable.

Lord Goddard said that if motorists knew that if they drove under the influence of drink they would run a very good chance of a prison sentence, there would be a great deal less drunken driving. A good many hard things had been said about magistrates, and he agreed that benches of magistrates did not inflict the fines or penalties they ought to. But they were not the only people who had to take responsibility in the matter. Of all the people concerned he put at the head the quarter sessions juries. The astonishing way in which juries acquitted in motoring cases was remarkable.

It had to be remembered, however, that if a bench got a reputation of being severe in those cases or passing severe sentences, the number of people who claimed to go for trial at once increased. That was one of the objections he felt to having those special courts, so often urged for motoring offences.

He went on to say that if motorists knew that they would have to take part of the damages in any circumstances he believed that might have a very strong effect in producing careful driving. Another suggestion was that the prosecution might be given leave to appeal to quarter sessions on the grounds that a penalty imposed was inadequate.

Replying to the debate on behalf of the Government, the Earl of Gosford said that they fully recognized the gravity of the road situation. But there was no facile answer to the problem. No amount of legislation by itself could solve it. Indeed, to the extent that full use was not at present being made of the penalties provided for in existing Road Traffic Acts, careful consideration would need to be given to the question of further legislation, which would only defeat its object if it did not command universal support. The Government were attacking the road problem in two ways, by education and propaganda, and by redesigning or designing roads to make them safer.

Later, in the Commons, Mr. Niall MacDermot (Lewisham, North), asked the Secretary of State for the Home Department, particularly in view of the Lords debate, whether he was proposing to reconsider the penalties for motoring offences.

The Secretary of State for the Home Department, Mr. R. A. Butler, replied that a review of small statutory fines was in progress, and they had in mind a general review of the penalties to which Mr. MacDermot had referred.

COSTS AGAINST THE POLICE

Lord Milner of Leeds asked the Government for details of (*a*) the number of cases in the Metropolitan police area during the year 1958 where a verdict of not guilty was given, and (*b*) the number of such cases in which costs were awarded against the police.

Lord Chesham replied that where a person was acquitted on indictment the court had power under s. 2 (2) of the Costs in Criminal Cases Act, 1952, in a limited class of cases to order the prosecutor to pay the whole or any part of the costs incurred in the defence; the court also had a general power under s. 1 (*b*) of that Act to order the payment of the costs of the defence out of local funds. In 1958 870 persons had been acquitted by courts of Assize or quarter sessions on charges preferred by the Metropolitan police. No orders had been made against the police under s. 2 (2) of the Act.

STREET OFFENCES BILL

The Street Offences Bill has emerged from the first day of its Committee stage in the Lords without amendment.

NOW TURN TO PAGE 1

Where fines are found to be irrecoverable, the Secretary of State will consider whether they may be written off, on receipt of a statement signed by the chairman of the justices.

PERSONALIA

APPOINTMENTS

Mr. Ronald Stanley Clothier, deputy town clerk of Kidderminster, Worcestershire, has been appointed clerk and solicitor to Friern Barnet, N.11, urban district council in succession to Mr. Edward G. Hubbard, who has been appointed clerk and solicitor to Walton and Weybridge, Surrey, urban district council. Mr. Clothier has served previously with the Dagenham and Wanstead and Woodford borough councils, and will take up his duties on September 1, next.

Mr. Henry Waring, Ll.B., chief assistant solicitor to Harrow, Middx., borough council, has been appointed deputy clerk to Beeston and Stapleford, Notts., urban district council in succession to Mr. E. J. Thomas, who is leaving the council's service to become clerk to Kirkby-in-Ashfield, Notts., urban district council.

Mr. Kenneth Peckham, first assistant to the magistrates' clerk, Gosport, has been appointed deputy clerk to the justices of Gosport and Fareham division of Hampshire.

Mr. George Edward Scott, chief constable for Sheffield, has been appointed chief constable for the West Riding of Yorkshire constabulary in succession to Sir Henry Studdy, who is retiring. He is to take up the appointment on November 1, next.

Mr. Charles George Churcher has been appointed assistant official receiver for the bankruptcy district of the county courts of Croydon, Guildford, Kingston-upon-Thames, Slough and Wandsworth, also for the bankruptcy district of the county courts of Aylesbury, Banbury, Brentford, Chelmsford, Edmonton, Hertford, Newbury, Oxford, Reading, St. Albans and Southend. This appointment took effect from May 4, 1959.

OBITUARY

Mr. Geoffrey Cameron Scrimgeour, clerk to Cheshire county council from 1932 to 1952, has died at the age of 72. Former clerk to Cheshire river board, he was a deputy lieutenant for Cheshire from 1952 to 1956.

CONFERENCES, MEETINGS, ETC.

JUSTICES' CLERKS' SOCIETY

Annual Meeting and Conference

The first conference of the Justices' Clerks' Society to be held outside London was in 1946 at Blackpool which was again the venue for the 1959 conference, from May 27–29.

The conference opened with a reception at the Imperial Hotel by His Worship the Mayor of Blackpool who provided generous hospitality. The following morning the Mayor welcomed over 100 members of the society and opened the annual meeting. Presenting the annual report of the council, the President (Mr. G. S. Green, Manchester county and Eccles borough) drew attention to the White Paper on Penal Reform and deplored the lack of facilities for the treatment of young offenders.

On the final morning Lord Merriman, who commented on the high standard set by clerks to justices in preparing cases for appeal, dealt with points likely to arise under the Maintenance Orders Act, 1958. His remarks were much appreciated.

Mr. Ralph Sweeting, M.A., Ll.B. (Wakefield city and Osgoldcross) is the new president; Capt. R. H. Langham, M.C., T.D., M.A. (Wallington), R. L. Hazell (Newington, London) the senior and junior vice-presidents respectively. Mr. Hazell is also continuing to act as honorary treasurer. Mr. A. J. Chislett, B.Sc. (Croydon) has succeeded Mr. B. J. Hartwell, Ll.M., as honorary secretary. A striking tribute to Mr. Hartwell's 12 years' service to the society as honorary secretary was paid by Mr. James Whiteside (Exeter city) to which Mr. Hartwell made a memorable and moving reply. The president presented Mr. Hartwell on behalf of the society with a canteen of cutlery and an illuminated engrossment of a resolution of the council conferring on him honorary membership.

The conference dinner was held at the Imperial Hotel and was attended among others by Lord Merriman, Lord Cozens Hardy, the recorder of Blackpool, Sir Robert Adcock, Mr. R. R. Pittam, assistant secretary, Home Office, the president of the Blackpool Law Society and His Honour Judge Walmsley.

The able conference secretary who had ensured the comfort of all who attended and the success of all the functions was Mr. Clifford F. Johnson (Blackpool).

"AND NEVER THE TWAIN SHALL MEET"

The institutions of this crazy modern world, and the events which are making their impact upon our lives, stand out in strong relief against the background where history, tradition and legend have located the very cradle of mankind. Those regions, which have come to be known as the near east and the middle east, comprise a number of countries whose civilization goes back to the most remote antiquity. Egypt, which is today contending for the political leadership of the Arab States, can show us great monuments of an astonishingly high level of artistic culture, which can be traced back at least 5,000 years; with written records, still extant, from the third millenium before Christ. Iraq, the modern name of the kingdom created (at the end of the First World War) by mandate of the League of Nations, and now torn between the ideologies of east and west, embraces an area slightly larger than that known for many centuries under the Greek name of Mesopotamia—"the land between the rivers"—the rivers in question being the Tigris and the Euphrates. On their banks once stood such famous centres of the ancient world as Nineveh, Ctesiphon and Babylon; much later, while Europe was passing through the Dark Ages, the learning, wealth and splendour of Baghdad testified to the achievements of the new Islamic faith. Persia, the mention of which (in newspaper headlines today) usually portends some new development in oilfields and refineries, was a powerful kindom as early as the eighth century B.C., continually extending its domain until it was checked by the Greeks of classical times; but thereafter still a great power until the defeat of Darius by Alexander the Great, in B.C. 331. And the modern state of Israel which, in all the panoply of political democracy and military power, recently celebrated the 10th anniversary of its foundation, still jealously preserves its affiliations with the people who dwelt there in ancient days, from the Exodus until the Roman Conquest.

In the countries we have mentioned there is no need further to point comparison between old and new; the very names call forth the contrasts in our minds. It may be doubted, however, whether any of them can hope to compete, in their incongruities between ancient memories and modern innovations, with the Republic of Lebanon—one of the two successor states to the former French mandated territory which was carved, in 1918, out of the old Turkish Empire; the other, of course, is Syria. The beauty of Lebanon, with its cedar-clad hills, is twice eulogized in *The Song of Songs*: the yearning maiden compares the salient features of its landscape with those of her beloved:

> "His countenance is as Lebanon, excellent as the cedars";
> and again—
> "Thy nose is as the tower of Lebanon, which looketh towards Damascus."

There is a reminiscence of these passages in a poem of Keats, *The Eve of St. Agnes,* where the poet tells of—

> "Spiced dainties, every one
> From silken Samarcand and cedar'd Lebanon."

Since the days when (as tradition has it) King Solomon wrote that most moving and sensual of all love-poems, Lebanon has been renowned for its great forests of spreading cedars, which (so the *First Book of Kings* tells us) supplied a great part of the timber requirements for the building of the Temple, and also for the King's own palace, in Jerusalem.

Recently, according to *The Times,* Lebanon has staked a fresh claim to celebrity. For, according to the issue of our contemporary dated June 2, its correspondent in Beirut saw the trial-run of the new local television service, the first in the middle east. British, French and Belgian technicians are co-operating with a group of Lebanese business-men to run the station under private enterprise. *The Times* quotes the observation of a local cynic: "Who knows? This may solve the country's problems. We shall all stay at home at night instead of fighting each other!"

If that happens, it will be an excellent thing; but some of what was seen during the trial-run, and more of what is promised for the future, seems to the reader strangely out of place. "Flashes" appeared on the screen of a nature-study from the English countryside, with excerpts of an entertainment entitled *The Adventures of Robin Hood.* We have nothing against the hero-worship of our boyhood's days; Robin Hood shooting off arrows at the forces of law and order (represented by the Sheriff and his followers), making merry with Friar Tuck, and being sentimental with Maid Marian, was all very well in the jolly greenwood of Sherwood Forest in his native Nottinghamshire; but a merry Robin, a jovial Friar and a comely Marian among the cedars of Lebanon are a good way off their beat.

The same applies to some of the previews. *The Highway Patrol* in their high-powered cars, or *The Lone Ranger,* silhouetted in the saddle, against the sunlit sky of California, Nevada, Arizona or Utah, may be excellent Westerns; but who ever saw or heard of a Lone Ranger watching for Indians on the war-path, or a Highway Patrol chasing gangsters or bootleggers, among the Lebanese cedar-clad slopes? Local colour should be local, after all.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Payments until child attains* 14—*Continuance of payments after that age.*

An affiliation order was made on February 1, 1946 in respect of a child born on February 26, 1945, under which payment was ordered at 10*s.* 6*d.* per week until the child attained the age of 14 years. The child became 14 years on February 26, 1959, and is likely to continue at school until his 15th birthday at the least. Can you advise as to any way in which payment under this order can continue? FOLIMA.

Answer.

A similar point was raised in a P.P. at 119 J.P.N. 823, and the opinion there expressed was that the order could be revived by virtue of s. 53 of the Magistrates' Courts Act, 1952. We see no reason to alter that opinion.

2.—Compulsory Purchase—*Improvement of highway—Acquisition of easement.*

My council are the highway authority for a class III road in a rural district and are considering a means of draining this road by a drain running through an adjacent field and leading to a soakaway in the same field. The soakaway will be within 220 *yds.* of the middle of the road. The owner of the field may not be prepared to agree to such a method of drainage and some of the powers relevant seem to be as follows:—

1. Section 67 of the Highway Act, 1835, gives a highway authority power to make all necessary ditches upon paying the owner or occupier for the damage sustained. The provisions of this section may not however apply here, because the section does not authorize the discharge of the contents of the drain on such land: *see Croysdale* v. *Sunbury-on-Thames U.D.C.* (1898) 62 J.P. 520.

2. Among the powers available to highway authorities for the acquisition of land and interests in the land, s. 13 of the Restriction of Ribbon Development Act, 1935, appears as relevant as any. The section provides that any highway authority may acquire compulsorily, if authorized by the Minister, any land within 220 *yds.* from the middle of any road the acquisition of which is in their opinion necessary for the purpose of the improvement of the road. Section 24 defines land as including any right, in, over, or under the land. Apart from the question whether the Minister will confirm a compulsory order for the acquisition of the field or an easement through the field on the merits:—

(*a*) Is the purpose mentioned above an "improvement"? The Act does not define improvement and as the road is at the moment subject to flooding the provision of the drain and soakaway may be considered an "improvement";

(*b*) If the answer to (*a*) is yes, can the right to lay the drain and the soakaway be said to be a right as defined by s. 24? In *Croysdale's* case the court seemed to consider that the reception of drainage off the highway in such a manner could be made the subject of an agreement; if this is so then it may be that it is a right which can be compulsorily acquired. POLID.

Answer.

In several 19th century cases it was held that easements could not be purchased compulsorily but, as *Lumley* points out, these were before some of the modern definitions of "land," which go further than s. 3 of the Interpretation Act, 1889. A right to discharge water on to the servient tenement is a recognized easement (*Brown* v. *Dunstable Corporation* (1899) 63 J.P. 519), and so is a right to carry water in a channel across the servient tenement: *Bealey* v. *Shaw* (1805) 6 East 208. We have no doubt that the highway authority can acquire this right by agreement. The wide definition of "land" in the Act of 1935 suggests that they can, if necessary, acquire it compulsorily, but it is right to say that we have been unable to find a case where this power has been judicially established. It would therefore be better to secure the desired easements by agreement if possible.

3.—Criminal Law—*Commission of further offence during probation—Continuance of probation.*—R. *v.* Evans.

A was put on probation for two years for larceny. He committed a further offence within this period. The justices wish to continue the probation and to impose a substantial fine. How should this be done?

1. If the justices ignore the original offence and impose a fine for the second offence they ignore the warning given to the offender as to his future conduct, or

2. If they fine on the first offence and put the defendant on probation for a fresh term for the second offence the justices are ignoring the implied instruction given in the case of *R.* v. *Evans* [1958] 3 All E.R. 673 that justices ought not at one time to impose two unrelated types of punishment which they could not have imposed for one offence. HAPOLA.

Answer.

We do not think that *R.* v. *Evans*, *supra*, went so far as to frown upon our correspondent's second suggestion for dealing with such a case. That decision precludes a court from imposing two unrelated types of punishment only when the defendant is before it charged with two separate offences committed about the same time. If this is correct, the second suggestion is clearly preferable because the court is implementing the warning given to the defendant when he was put on probation and, at the same time, expressing its willingness to give him another chance.

4.—Criminal Law—*Obtaining petrol on forged ticket—What offence.*

A calls at a garage with his car and asks for and is given five gallons of petrol and one pint of oil. After being supplied, he asks the attendant to put the amount on a credit ticket and book it to a firm X. This ticket was made out and signed by A with the name B, this name being that of a driver of the firm X, who is entitled to draw petrol on credit for the firm.

There would appear to be no charge of incurring a debt or liability under the Debtors Act, as a credit is given to the firm X and not to A.

Would you not consider that there was an offence under s. 7 of the Forgery Act in this case? HARED.

Answer.

We agree with our correspondent that there does not appear to be an offence under the Debtors Act. Clearly, there is an offence of obtaining the petrol by means of a forged instrument under s. 7 of the Forgery Act, 1913, but equally clearly, there has been an obtaining by false pretences. The attendant, if asked, would undoubtedly say that if he had known that A was not employed by the firm and was not authorized to obtain the petrol, he would not have delivered it to him.

5.—Husband and Wife—*Maintenance Orders Act*, 1958—(1) *Application for attachment of earnings order—By whom made?*—(2) *Can statement of earnings be required on a summons for arrears?*

Under the Maintenance Orders Act, 1958, as I read it, a court has jurisdiction to make an attachment of earnings order in two instances, either under s. 6 on a specific complaint for such an order, or under s. 7 on a summons to enforce arrears due. It is also provided that an application under s. 6 must be made by a clerk to the justices on behalf of a person entitled to receive payments provided the clerk receives a request in writing to this effect. The point that has occurred to me, however, is whether or not the justices have power to hear such an application under s. 6 in the absence of the complainant, since if this is not so, applications by the clerk would clearly be impracticable, except in his own court. I can find nothing in the Maintenance Orders Act, 1958, which specifically deals with this point on an application for an attachment of earnings order, although of course s. 16 of the Act amending s. 74 of the Magistrates' Courts Act, 1952, would seem to apply in the case of an arrears summons but only in such a case.

I shall also be glad to know whether you consider the power of the court to obtain statements of earnings under s. 11 of the Maintenance Orders Act, 1958 can be exercised only on an application for an attachment order under s. 6 of the Act or whether such a statement could be ordered on an arrears summons. I hold the opinion that such an order cannot be made in the latter case, as an arrears summons is not a "proceeding relating to an attachment of earnings order," but I shall be glad to know your views. FOCERA.

Answer.

1. The clerk can apply for an attachment of earnings order to be made by virtue of ss. 6 (1) and 21 (2) of the Act. In that case, the clerk would be the complainant and we cannot see that the presence of the wife is essential before an attachment of earnings order can be made.

2. A statement of earnings under s. 11 of the Act can be required on a summons for arrears since it is a proceeding in which an attachment of earnings order may be made (*see* s. 21 (3).)

6.—Husband and Wife—*Maintenance Orders Act*, 1958—*Allocation of sums paid after sentence of imprisonment for arrears.*

With reference to P.P. 5 at p. 289, *ante*, as far as I can see it is only payments made under an attachment of earnings order that must be applied to old arrears first (s. 13 (2)). If this was taken as

the general principle for the application of all payments, the position would be created in which current payments were made to be in arrear by the clerk allocating payments to old arrears and in effect resurrecting the old arrears not subject to enforcement by imprisonment as new arrears liable to be so enforced.

Have you not overlooked s. 67 of the Magistrates' Courts Act, 1952, and the decision in *R.* v. *Miskin Lower JJ.* (1953) 117 J.P. 166, which deal specifically and otherwise with the allocation of payments in certain circumstances? It would not be possible on a suspended committal to apply payments to old arrears. In such circumstances all payments must be applied in reduction of the amount of the committal.

Section 74 (8) of the Magistrates' Courts Act provides that imprisonment does not discharge the liability to pay the amount but that to me is no authority for applying payments in any particular way. It is true that payments under an attachment of earnings order must be for old arrears first but in any other case I consider that payments should be credited to the best advantage of the defendant or according to his direction.

If your answer was adopted in practice it would mean that some men could be continually in prison as their payments would be allocated to old arrears and the current arrears subject to imprisonment would then be added to swell the old arrears which would continue to swallow up future payments and the cycle would be perpetual. HALFOR.

Answer.

The points our correspondent makes are the very ones which caused us in the P.P. referred to to come to a " reluctant conclusion." We agree that if there is a suspended committal in force, s. 67 of the Magistrates' Courts Act, 1952 and the decision in *R.* v. *Miskin Lower JJ., supra*, apply, and any payments made must go towards the reduction of the amount for which the imprisonment was imposed. We are still not satisfied that this should apply where no committal order has been made, if only to give some meaning to the new s. 74 (8). This provision is a complete reversal of the principle that imprisonment discharged arrears and if our interpretation be wrong, the effect of the provision is merely to clog up a ledger account with arrears which can never be enforced and are unlikely to be paid unless the husband comes into a fortune. The escape from the dilemma will be obvious to any realistic bench. They will be ready to remit arrears in respect of which the man has served a sentence of imprisonment.

7.—Licensing—*Registered club—Supply of intoxicating liquor to members and their guests on a single occasion in a marquee away from the club premises.*

A members' club is registered in the petty sessional division of A. The club has been granted permission to erect a marquee at a fête for the benefit of supplying refreshments to its members and their guests in the petty sessional division of B.

The club wishes to supply intoxicants to its members in the marquee for the duration of the fête from 10 *a.m.* to 10 *p.m.* We have referred to *Humphrey* v. *Tudgay* (1915) 79 J.P. 93 and *Clarke* v. *Griffiths* (1926) 90 J.P. 152. We should like to know:

(*a*) If this can legally be done.

(*b*) If so, does any application have to be made to the justices of either division or notice given to the police?

(*c*) Must the club premises close while the club marquee functions?

(*d*) The club rules set out the "permitted hours" for supply of drinks in the club. Must the rules be altered to supply between 10 *a.m.* and 10 *p.m.* in the marquee? OURIN.

Answer.

On the authority of the cases mentioned by our correspondent and also the decision in *Watson and Another* v. *Culley* (1926) 90 J.P. 119 (in which the facts resemble those outlined by our correspondent), our answers are:

(*a*) Yes.
(*b*) No.
(*c*) No.
(*d*) No.

We answered a similar question in our Vol. 114 at p. 423.

8.—Magistrates—*Appeal—Complaint.*

I received the enclosed notice of appeal under s. 23 (4) of the Town and Country Planning Act, 1947, which was forwarded to me by the solicitors acting for the appellant in March, 1957. The matter was adjourned *sine die* by agreement between the appellant and the county council and the appellant has now made a request that the appeal be heard before the magistrates as soon as convenient. It appears that the appeal should be made by way of complaint under r. 30 of the Magistrates' Courts Act, 1952. If a form of complaint had been filed I would prepare and issue a summons on that complaint but this was not done in this case. The solicitors for the appellant informed me in their letter forwarding the notice of appeal that a copy of the notice had been served on the county council.

May I have your opinion as to whether the court can proceed to hear the appeal having regard to the fact that it has not been made by way of complaint. CORMAC.

Answer.

Rule 4 of the Magistrates' Courts Rules says that a complaint need not be in writing or on oath, unless some enactment so requires, and the form scheduled to the Magistrates' Courts (Forms) Rules, 1952, is not obligatory. Seeing that a fresh complaint made now would be out of time, and that neither the respondent local authority nor the court raised objection on grounds of form to the appeal lodged in 1957 (and indeed they tacitly admitted its validity by agreeing to adjourn the hearing), we do not think the Divisional Court would look favourably upon an objection raised on grounds of form at this stage. We think the magistrates should let the case proceed.

9.—Road Traffic Acts—*Dangerous driving?—Vehicle driven correctly but with two children riding on front wing—One child fell off and was injured.*

I have received a report concerning the use of a motor vehicle on a road when the driver permitted two young children to ride on the front wings. One child fell off and sustained serious injuries.

There is no evidence that the vehicle was being driven other than on its correct side, or at a fast speed, and no person, except the children referred to, was endangered.

I am of the opinion that I can proceed against the driver under the Motor Vehicles (Construction and Use) Regulations, 1955, reg. 73 (3), but it seems to me that he was driving recklessly when he wilfully permitted the children to be carried on the outside of his vehicle and that he could be prosecuted under s. 11 of the Road Traffic Act, 1930. With this in mind I have caused notice to be served in accordance with s. 21 of the above Act.

I can find no record of such a case being dealt with for dangerous or reckless driving and I should be grateful if you would kindly advise me. IDENO.

Answer.

We do not know of any authority on this point. In our view, on the wording of s. 11 of the Act of 1930, the relevant consideration on a charge of dangerous driving must be the manner in which the vehicle was driven. We do not think, therefore, that the facts stated in the question justify a charge of dangerous driving. We agree that reg. 73 (3), *supra*, is appropriate.